



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

ENERGY

IN THE MATTER OF THE AMENDED PETITION OF)	<u>DECISION AND ORDER</u>
ATLANTIC CITY ELECTRIC COMPANY FOR A)	<u>AS TO THE "SOUTHERN"</u>
DETERMINATION PURSUANT TO THE PROVISIONS)	<u>ROUTE</u>
OF N.J.S.A. 40:55D-19 THAT THE USE OF)	
CERTAIN LANDS WITHIN THE TOWNSHIP OF)	
EGG HARBOR, TOWNSHIP OF GALLOWAY, AND)	
THE CITY OF PORT REPUBLIC WITHIN THE COUNTY)	
OF ATLANTIC; AND WITHIN THE TOWNSHIP OF BASS)	
RIVER WITHIN THE COUNTY OF BURLINGTON; AND)	
WITHIN THE TOWNSHIP OF LITTLE EGG HARBOR,)	
TOWNSHIP OF EAGLESWOOD, TOWNSHIP OF)	
STAFFORD, TOWNSHIP OF BARNEGAT, TOWNSHIP)	
OF OCEAN, TOWNSHIP OF LACEY WITHIN THE)	
COUNTY OF OCEAN, ALL IN THE STATE OF NEW)	
JERSEY, ARE REASONABLY NECESSARY FOR THE)	
SERVICE, CONVENIENCE OR WELFARE OF THE)	
PUBLIC; AND THAT THE ZONING AND LAND USE)	
ORDINANCES OF THOSE MUNICIPALITIES AND)	
COUNTIES SHALL HAVE NO APPLICATION THERETO)	DOCKET NO. EE02080521

(SERVICE LIST ATTACHED)

BY THE BOARD:¹

This Decision and Order is in conjunction with the previously issued decision of the New Jersey Board of Public Utilities ("Board") as to the "Northern" route of the proposed transmission line, issued under the same docket number by the Board on April 20, 2004, and supplemented by the Board through orders issued on April 23, 2004 and April 29, 2004. As this Order is predicated upon the same factual circumstances as set forth previously, and because the full recitation of the details and procedural history of this matter can be found in those Orders, the Board expressly adopts those Orders as an element of this current Order.

Atlantic City Electric Company ("Atlantic Electric", "Company" or "Petitioner") is a corporation of the State of New Jersey, and an electric utility as defined within Title 48 of the New Jersey

¹ Commissioner Jack Alter did not participate in the deliberation or the vote on this matter.

Statutes and, as such, is subject to the jurisdiction of the Board. On August 9, 2002, Atlantic Electric filed a Petition pursuant to N.J.S.A. 40:55D-19 requesting an order that the Zoning, Site Plan Review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act of the State of New Jersey, as adopted by the Township of Egg Harbor, the Township of Galloway, the City of Port Republic within the County of Atlantic, and the Township of Bass River within the County of Burlington, and the Township of Little Egg Harbor, the Township of Eagleswood, the Township of Stafford, the Township of Barnegat, the Township of Ocean, and the Township of Lacey within the County of Ocean or by any of them, or of the respective counties, all in the State of New Jersey, shall not apply to either the siting of certain transmission line corridors or the construction and operation of a 230,000 volt ("230kV") transmission line all as more specifically described therein and as proposed to be constructed within and through a portion of said municipalities and counties; nor shall such Statute, Ordinances, Rules or Regulations promulgated thereunder be applied to the facilities and structures associated with and appurtenant to said transmission line. On January 21, 2004, Atlantic Electric filed a petition amending the original Petition that had been filed on August 9, 2002. This Amended Petition was also filed pursuant to N.J.S.A. 40:55D-19 and requested an order that the Zoning, Site Plan Review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act of the State of New Jersey, as adopted by the Township of Egg Harbor, the Township of Galloway, the City of Port Republic within the County of Atlantic, and the Township of Bass River within the County of Burlington, and the Township of Little Egg Harbor, the Township of Eagleswood, the Township of Stafford, the Township of Barnegat, the Township of Ocean, and the Township of Lacey within the County of Ocean or by any of them, or of the respective counties, all in the State of New Jersey, shall not apply to either the siting of certain transmission line corridors or the construction and operation of a certain 230kV transmission line all as more specifically described therein and as proposed to be constructed within and through a portion of said municipalities and counties; nor shall such Statute, Ordinances, Rules or Regulations promulgated thereunder be applied to the facilities and structures associated with and appurtenant to said transmission lines.

Following the conclusion of the procedural requirements of this matter, the Board determined that adjudication would be split between what has been termed the "Northern" route, from the Oyster Creek Substation in Lacey Township to the Cedar Substation in Stafford Township, and the "Southern" route, from the Cedar Substation to the Cardiff Substation in Egg Harbor Township. The Northern route has been adopted, as noted above, and the Board now addresses the Southern route.

On June 8, 2004, the Board was notified that a Stipulation of Partial Settlement as to Stafford Township, Eaglewood Township, Little Egg Harbor Township, Ocean County and the Company was executed, modifying the route of the line from that initially proposed by the Company. This Stipulation modifies the route through Stafford Township, Eaglewood Township, Little Egg Harbor Township and results in the withdrawal of objection as to the project by all the signatories. Details of the Stipulated route are included below.

Proposed Route

The testimony of William E. Pyle, Jr., Supervisor of Right-of-Way within the Transmission and Distribution Engineering Department of the Company, which was graphically demonstrated by the use of aerial photograph, described the proposed route. At the southern end of the line within Egg Harbor Township, the first four miles pass through a residential/commercial area

along existing right-of-way #106. The next 11.3 mile section of line in the Townships of Egg Harbor and Galloway and the City of Port Republic is intended to be built along the Garden State Parkway in an area that is mostly forest. There are some residential properties in Galloway Township along Ash Avenue and in Port Republic that will require new easements for the proposed line. The next 7.0 miles of line in Bass River Township is intended to be built on an existing right-of-way through the forested property of Bass River State Park with a small portion built along an existing roadway. Moving north, the line continues as proposed in the Townships of Bass River and then, as to the route through Little Egg Harbor, Eagleswood and Stafford, and ending at Petitioner's Cedar Substation, the route shall be as described in the attached Stipulation of Partial Settlement.

Mr. Pyle testified that the proposed right-of-way will utilize new rights-of-way from the Garden State Parkway and other governmental agencies as well as private rights-of-way adjacent to the Garden State Parkway in Galloway Township and Port Republic in Atlantic County. While much of the Southern route is to be constructed along already impacted rights-of-way, some of the proposed route does pass through the Pinelands Preservation Area, which will require new rights-of-way.

Applicable Law and Findings

As in the previous Orders, the applicable standard to be applied in this matter is set forth within N.J.S.A. 40:55D-19 which provides, in pertinent part:

This act or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

The statute, and a previous incarnation, has been reviewed by the courts and some of the elements of the interpretation have been set forth and include:

1. The statutory phrase, 'for the service, convenience and welfare of the public' refers to the whole 'public' served by the utility and not the limited local group benefited by the zoning ordinance.
2. The utility must show that the proposed use is reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location.
3. It is the 'situation', i.e., the particular site or location . . . which must be found 'reasonably necessary,' so the Board must consider the community zone plan and zoning ordinance, as well as the physical characteristics of the plot involved and the surrounding neighborhood, and the effect of the proposed use thereon.
4. Alternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must

be considered in determining such reasonable necessity.

5. The Board's obligation is to weigh all interests and factors in the light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom. If the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.

[In re Public Service Electric & Gas Co., 35 N.J. 358, 376-77 (1961).]

As noted by this interpretation, the "welfare of the public" refers to the whole "public" served by a utility rather than the limited local group benefited by any particular zoning ordinance. Furthermore, the standard of reasonableness does not require that the proposed use is absolute or indispensable, but only that it is reasonably necessary for the public service, convenience or welfare. It is the obligation of this Board to weigh all the factors in making its determination, and, even where that balance is equal, the utility is entitled to the preference "because the legislative intent is clear that the broad public interest to be served is greater than local considerations." In Re Public Service Electric & Gas Company, 35 N.J. 358, 377 (1961); see also In Re Monmouth Consolidated Water Co., 47 N.J. 251 (1966).

In this matter, the Petitioner has shown by a preponderance of credible evidence that the use proposed by Atlantic City Electric Company of the lands described within the Amended Petition is necessary for the service, convenience and welfare of the public.

Based upon the foregoing, and a thorough review of the record in this proceeding, the Board HEREBY FINDS:

1. That Petitioner is a public utility subject to the jurisdiction of this Board;
2. That Petitioner has filed an Amended Petition with the Board requesting that an Order be entered determining that the Zoning and Land Use Ordinances of: the Townships of Egg Harbor and Galloway, and the City of Port Republic within the County of Atlantic; and the Township of Bass River within the County of Burlington; and the Townships of Little Egg Harbor, Eagleswood, Stafford, Barnegat, Ocean and Lacey within the County of Ocean; and that the Land Use Zoning Ordinances of the County of Atlantic, County of Burlington and County of Ocean, and other Ordinances, rules or regulations promulgated by any local or county authority under auspices of the Land Use Act of the State of New Jersey, shall not apply to either the siting, construction or operation of the proposed 230kV transmission line to be constructed between Petitioner's Cardiff Substation and terminating at the Oyster Creek Substation, adjacent to Petitioner's existing Sands Point Substation; all of which will pass through the aforementioned municipalities and counties. In addition, Petitioner has requested that such Ordinances, rules and regulations promulgated thereunder shall likewise not be applied to the facilities and structures associated with and appurtenant to said transmission lines;
3. That the proposed facilities to be constructed within the aforementioned municipalities and counties are necessary for the service, convenience and welfare of the public;

4. That the proposed electric transmission lines and the necessary appurtenant facilities will meet or exceed the requirements of the National Electrical Safety Code in compliance with the regulations of this Board;

5. That the Southern Route of the 230kV transmission line, as proposed, designed, routed and constructed, will minimize any adverse impact upon the environment;

6. That the 60Hz electric field levels associated with the proposed 230kV transmission line complies with both the Florida and the New York standards for transmission line magnetic field levels, and that there is no existing New Jersey guideline for magnetic field levels;

7. That the estimated 60Hz electric and magnetic field levels associated with the proposed transmission line at the 230kV level are similar to the actual electric and magnetic field levels associated with other 230kV transmission lines already in operation within Petitioner's service territory within the State of New Jersey and transmission lines across the United States and are similar to field levels experienced by individuals through their day to day activities and are consistent with transmission line approvals heretofore granted by this Board;

8. That the design and routing of the proposed 230kV and 69kV transmission lines incorporates reasonable efforts by Petitioner to manage electric and magnetic field exposures at modest cost such as by designing the line using a delta type conductor configuration, by utilizing an existing already impacted right-of-way, by avoiding highly populated concentrations of residential development where practicable, by using single shaft steel poles rather than H-frame or lattice towers and by compressing distances between the conductors, which constitutes effective prudent field management;

9. That the proposed electric transmission lines and appurtenance are not permitted uses in all of the Zoning districts of all of the Zoning and Land Use Ordinances of the affected municipalities and counties;

10. That the height of the pole structures, as proposed, exceeds the height limitation set forth in certain of the Zoning and Land Use Ordinances of the affected-municipalities and counties;

11. That the siting of the proposed electric transmission and subtransmission lines does not conform in all other respects to the local site development plans of each of the affected municipalities and counties, and that the transmission line and the transmission line corridors may not satisfy, in all respects, and they in fact deviate from other requirements of the Land Use and Zoning Ordinances of the affected municipalities and of the Master Plan Ordinances of the respected municipalities, inclusive of but not limited to minimum setbacks, site plan approvals, construction permits, or other permits and licenses which may be required by certain of the Land Use or other Ordinances or regulations promulgated thereunder;

12. That, with regard to the southern portion of the route from the Cardiff Substation in Egg Harbor Township to the Cedar Substation in Stafford Township ("Southern Route"), the location of the proposed electric transmission lines is compatible with the public interest;

13. That, with regard to the Southern Route, there is no reasonable, practicable, permanent and reliable alternative to the construction and routing of the proposed 230kV transmission line which would have any less adverse impact upon the environment or upon the

Zoning and Land Use Ordinances of the affected municipalities or counties within the Southern Route;

14. That, based upon the record in this proceeding, there is no reason to deny permission to construct and energize the subject transmission lines on the basis that said lines would adversely affect the public health;

15. That the siting and the route of the proposed 230kV transmission line has been selected for interconnection with Petitioner's existing and future transmission plans, and are a reasonable and prudent part of Petitioner's system planning program;

16. That the subject 230kV transmission line, and its associated facilities and structures to be constructed as proposed by Petitioner are reasonable and necessary for the service, convenience and welfare of the public and in order to enable Petitioner to provide continued safe, reliable and economic service to Petitioner's customers and to provide adequate, permanent and reliable interconnection between Petitioner's existing transmission, subtransmission and distribution systems;

17. That, as to the Southern Route, the proposed 230kV transmission line and its associated facilities and structures to be constructed, as proposed by Petitioner, can be constructed, installed and operated without substantial detriment to the public good, without violating the intent and purpose of the zoning plans and zoning ordinances of the affected municipalities and counties, and without causing undue economic injury to the neighboring property owners;

18. That portions of the proposed Southern Route of the 230 kV transmission line and its associated facilities and structures will be sited and located within areas governed by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., ("Pinelands Areas"). Specifically, portions of this Route are proposed to be constructed in areas designated, in accordance with the requirements of the Act and its implementing regulations, the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50, as Preservation Area District or Forest Area;

19. That, to the Board's understanding, and in accordance with the standards of the Pinelands CMP governing the distribution and intensity of development and land use in the Preservation Area District and Forest Areas, N.J.A.C. 7:50-5.22 and 5.23, respectively, construction of public service infrastructure, which includes electrical transmission lines, is generally not a permitted use;

20. That, to the Best of the Board's understanding, the Pinelands CMP, N.J.A.C. 7:50-4.52(c)2, authorizes the service, convenience and welfare of the public, and its finding in the land use and environmental standards of the Pinelands CMP;

21. That, given the Board's prior findings, the Board believes it appropriate to seek to enter into a memorandum of agreement with the Pinelands Commission to authorize construction of those portions of the Route located within the Pinelands Area, with approval of any such memorandum of agreement to be issued by the Board at subsequent public agenda meeting.

22. That the findings contained within this Order as a result of the thorough and complete review of the record in this proceeding are limited to the facts and circumstances of this particular transmission line as intended to be constructed by Petitioner, and shall not be

construed as a determination by this Board with regard to any other 230kV transmission line for which application may now be pending or for which application may hereafter be sought, and that such determination must be made by this Board on a case by case basis giving due regard to the evidence presented within each such application.

Therefore, the Board HEREBY DETERMINES that, in accordance with N.J.S.A. 40:55D-19, the 230kV transmission line as proposed by Petitioner, and its associated facilities, to be situated within the Townships of Egg Harbor and Galloway, the City of Port Republic within the County of Atlantic, the Township of Bass River within the County of Burlington, the Townships of Little Egg Harbor, Eagleswood, Stafford, Barnegat, Ocean and Lacey within the County of Ocean are reasonably necessary for the service, convenience and welfare of the public in order to enable Petitioner to continue to adequately and safely serve its customers; that Petitioner shall be permitted to construct, operate and energize the 230kV transmission line, as proposed, by July, 2005; that the line will be energized and operated at 230kV without further Order from this Board; and that the Local Land Use and Zoning ordinances, and any Ordinance, rule or regulation promulgated under the auspices of the Land Use Act of the State of New Jersey by any affected municipality or county, or in furtherance thereof shall not apply to the routing, construction, use and operation of the 230kV transmission lines.

Accordingly, the Board HEREBY ORDERS that, in accordance with N.J.S.A. 40:55D-19 et seq., and with regard to the Southern Route, that no governmental ordinances or regulations, permits or license requirements made under the authority thereof shall apply to the siting, installation, construction or operation of the proposed 230kV transmission line, the transmission line corridors, nor to any of its appurtenant or associated facilities and structures to be constructed; and that Petitioner, as to the Southern Route, shall be permitted to proceed to commence and complete the construction and installation and shall proceed to energize and operate the 230kV transmission line, and all facilities appurtenant thereto, in the manner hereinabove determined by this Board.

The Board remains cognizant that the siting of the 230kV transmission line is located within areas governed by the Pinelands Protection Act and the Coastal Area Facilities Review Act. This Order shall not be construed as a certificate, license, consent or permit to construct or disturb any land within the jurisdiction of these areas until Petitioner obtains any approval or authorization to proceed from the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq.

and the New Jersey Department of Environmental Protection pursuant to N.J.S.A. 13: 19-1 et seq. and until the Commission and the Board have executed a memorandum of agreement addressing those areas of the Route located within the Pinelands Area.

DATED: **6/15/04**

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY

**I/M/O the Amended Petition of Atlantic City Electric Company for a Determination
Pursuant to the Provisions of N.J.S.A. 40:55D-19**

BPU DOCKET NO. EE02080521

SERVICE LIST

Enid L. Hyberg, Esq.
John Aleli, Esq.
Youngblood, Corcoran, Lafferty,
Hyberg & Waldman
3205 Fire Road
P.O. Box 850
Pleasantville, NJ 08232
Fax: 609-645-8959
Representing Atlantic City Electric Company

Anthony J. Pagano, Esq.
Department of Law
County of Atlantic
1333 Atlantic Avenue
Fax: 609-343-2373
Atlantic City, NJ 08401-8278
Representing Atlantic County

Carl W. Erler, Esq.
Berry, Sahradnik, Kotzas, Riordan &
Benson
212 Hooper Avenue
P.O. Box 757
Toms River, NJ 08754-0757
Fax: 732-505-3073
Representing Ocean County

Carl V. Buck, III, Esq.
Assistant County Solicitor
County Administration Building
Room 225
49 Rancocas Road
Mount Holly, NJ 08060
Fax: 609-265-5933
Representing Burlington County

Michael J. Blee, Esq.
Ravillard & Blee
8205 Black Horse Pike
Bayport One, Suite 455
West Atlantic City, NJ 08232
Fax: 609-344-5044
Representing City of Absecon &
Galloway Township

Jerry J. Dasti, Esq.
Dasti, Murphy, McGuckin, Ulaky,
Cherkos & Connors
620 W. Lacey Road
P.O. Box 1057
Forked River, NJ 08731
Fax: 609-971-7093
Representing Township of
Barnegat

Peter H. Nelson, Esq.
McCrink, Nelson & Kehler
475 Route 73 North
West Berlin, NJ 08901
Fax: 856-768-7243
Representing Township of Bass
River

Gilmore & Monahan
10 Allen Street
P.O. Box 1540
Toms River, NJ 08754
Fax: 732-244-1840
Representing Little Egg Harbor
Township

Keith A. Davis, Esq.
Perskie, Nehmad & Perillo
P.O. Box 730
Somers Point, NJ 08244
Fax: 609-926-9721
Representing City of Port
Republic

(Continued...)

Township of Egg Harbor
Patricia Indrieri, Clerk
3515 Bargaintown Road
Egg Harbor, NJ 08234-8321
Fax: 609-926-4002

Township of Eagleswood
Claudia Bradford, Deputy Clerk
146 Division Street
P.O. Box 409
West Creek, NJ 08092
Fax: 609-296-4649

Township of Stafford
Bernadette M. Park, Clerk
260 E. Bay Avenue
Manahawkin, NJ 08050
Fax: 609-242-8224

Township of Ocean
Dorothy R. Horner, Clerk
50 Railroad Avenue
Waretown, NJ 08758
Fax: 609-693-9026

Township of Lacey
Veronica Laureigh, Clerk
Municipal Bldg.
818 W. Lacey Road
Forked River, NJ 08731
Fax: 609-693-0526

Burlington County Board of
Freeholders
Frederick F. Galso, Clerk
County Office Bldg.
49 Rancocas Road
P.O. Box 6000
Mount Holly, NJ 08060
Fax: 609-702-7000

Murray F. Bevan, Esq.
Courter, Kobert & Cohen, P.C.
1001 Route 517
Hackettstown, NJ 07840
Representing Commonwealth Shore Power,
LLC

R. Peter Lalor
P.O. Box 249
Branford's Neck Road
Wachapreague, VA 23480
Representing Commonwealth Shore Power,
LLC

Samuel A. Stern, Esq.
Hills and Stern, LLP
901 15th Street NW
Suite 400
Washington, D.C. 20005
Representing Commonwealth Shore Power,
LLC

John Paul Doyle, Esq.
Carluccio, Leone, Dimon, Doyle & Sacks
LLC
9 Robbins Street
P.O. Box 5310
Toms River, New Jersey 08753
Fax: 732-505-6340
Representing Mignatti Companies

Elaine Kaufmann, Esq.
Division of the Ratepayer
Advocate
31 Clinton Street
P.O. Box 46005
Newark, NJ 07101
Fax: 973-624-1047

Nusha Wyner
George Riepe
Carl Dzierzawiec
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Fax: 973-648-2467

Alex Moreau, DAG
Division of Law
124 Halsey Street
P.O. Box 45024
Newark, NJ 07101
Fax: 973-648-7156

(Continued...)

Kenneth J. Sheehan, DAG
Division of Law
124 Halsey Street
P.O. Box 45024
Newark, NJ 07101
Fax: 973-648-7156

Edward Beslow, Esq.
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Fax: 973-648-4410